

# Exhibit D

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**MOTORS LIQUIDATION COMPANY, *et al.*,  
f/k/a General Motors Corp., *et al.*,**

**Debtors.**

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**AGREED UPON AND DISPUTED STIPULATIONS OF FACT REGARDING  
THE EQUITABLE MOOTNESS THRESHOLD ISSUE<sup>1</sup>**

Pursuant to this Court's *Supplemental Scheduling Order, Dated July 11, 2014, Regarding (i) the Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction, (ii) the Objection Filed by Certain Plaintiffs in Respect Thereto, and (iii) Adversary Proceeding No. 14-01929* (the "July Scheduling Order"), Wilmington Trust Company, as trustee for and trust administrator of the Motors Liquidation Company GUC Trust (the "GUC Trust"), and certain unaffiliated holders of beneficial units of

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<sup>1</sup> Unless otherwise indicated, capitalized terms not defined herein shall have the meanings ascribed to them in the July Scheduling Order (as defined herein).

the Motors Liquidation Company GUC Trust (each, a “Unitholder” and collectively, the “Unitholders”) hereby submit the following agreed upon stipulations of fact concerning the Equitable Mootness Threshold Issue (the “Equitable Mootness Stipulations”).

In addition, annexed hereto as Attachment 1 is the GUC Trust’s and the Unitholders’ proposed stipulations of fact that have not been agreed to by the other Counsel for the Identified Parties.

### **THE GENERAL MOTORS CORPORATION BANKRUPTCY**

1. On June 1, 2009, General Motors Corporation (“Old GM”) and three of its direct and indirect subsidiaries, Saturn, LLC, n/k/a MLCS, LLC (“MLCS”), Saturn Distribution Corporation, n/k/a MLCS Distribution Corporation (“MLCS Distribution”), and Chevrolet-Saturn of Harlem Inc., n/k/a MLC of Harlem, Inc. (“MLCS Harlem” and collectively with Old GM, MLCS, and MLCS Distribution, the “Debtors”) commenced cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

2. On July 10, 2009, each of the Debtors consummated a sale of substantially all of its assets in a transaction under Section 363 of the Bankruptcy Code (the “363 Sale”) to an acquisition vehicle, NGMCO, Inc., pursuant to (i) that certain Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, among the Debtors and New GM (as amended, the “Sale Agreement”), and (ii) an order of the Bankruptcy Court, dated July 5, 2009 (the “Sale Order”). Following the 363 Sale, Old GM changed its name to Motors Liquidation Company (“MLC”) and the acquisition vehicle later became General Motors LLC (“New GM”).

3. The consideration provided by New GM to the Debtors under the Sale Agreement was set forth in the Sale Decision as follows:

“Old GM is to receive consideration estimated to be worth approximately \$45 billion, plus the value of equity interests that it will receive in New GM. It will come in the following forms:

- i. a credit bid by the U.S. Treasury and EDC, who will credit bid the majority of the indebtedness outstanding under their DIP facility and the Treasury Prepetition Loan;
- ii. the assumption by New GM of approximately \$6.7 billion of indebtedness under the DIP facilities, plus an additional \$1.175 billion to be advanced by the U.S. Treasury under a new DIP facility (the ‘Wind Down Facility’) whose proceeds will be used by Old GM to wind down its affairs;
- iii. the surrender of the warrant that had been issued by Old GM to Treasury in connection with the Treasury Prepetition Loan;
- iv. 10% of the post-closing outstanding shares of New GM [(the “New GM Common Stock”)], plus an additional 2% if the estimated amount of allowed prepetition general unsecured claims against Old GM exceeds \$35 billion;
- v. two warrants, each to purchase 7.5% of the post-closing outstanding shares of New GM, with an exercise price based on a \$15 billion equity valuation and a \$30 billion equity valuation, respectively [(the two series of warrants, the “New GM Warrants”)]; and
- vi. the assumption of liabilities, including those noted [in the Sale Decision].”  
Sale Decision, at 18-19.

4. The New GM Common Stock and both series of New GM Warrants (collectively, the “New GM Securities”) are currently listed on the New York Stock Exchange.

5. New GM and the Debtors further agreed that New GM would provide additional consideration if the aggregate amount of allowed general unsecured claims against the Debtors exceed \$35 billion. (*See* Sale Agreement, § 3.2(c)). In that event, New GM will be required to issue additional shares of New GM Common Stock for the benefit of the GUC Trust's beneficiaries. (*See id.*). The number of additional shares of New GM Common Stock to be issued will be equal to the number of such shares, rounded up to the next whole share, calculated by multiplying (i) 30 million shares (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to such New GM Common Stock from and after the closing of the 363 Sale and before issuance of additional shares) and (ii) a fraction, (A) the numerator of which is the amount by which allowed general unsecured claims exceed \$35 billion (such excess amount being capped at \$7 billion) and (B) the denominator of which is \$7 billion.”<sup>2</sup> (*See* Motors Liquidation Company GUC Trust Quarterly GUC Trust Reports as of September 30, 2013 at 6).

6. On September 16, 2009, the Bankruptcy Court entered its *Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Section 503(b)(9) of the Bankruptcy Code) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof* (the “Bar Date Order”). (Dkt. No. 4079).

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<sup>2</sup> *See* Second Amendment to Sale Agreement, Section 2(r) (amending Section 3.2(c) of the Sale Agreement) (“Sellers may, at any time, seek an Order of the Bankruptcy Court ... estimating the aggregate allowed general unsecured claims against Sellers’ estates ... [and if] the Bankruptcy Court makes a finding that the estimated allowed general unsecured claims against Sellers’ estates exceed \$35,000,000,000, then Purchaser will ... issue additional shares of Common Stock ...”). While the Sale Agreement initially provided for the issuance of up to 10,000,000 additional shares, this number has subsequently been adjusted for the three-for-one split of New GM Common Stock. (*See Disclosure Statement for Debtors’ Amended Joint Chapter 11 Plan* at 17-18 n.2). (Dkt. No. 8023).

7. Pursuant to the Bar Date Order, the Bankruptcy Court established November 30, 2009 as the deadline for each person or entity to file a proof of claim against any of the Debtors (the “Bar Date”), and approved the form and manner of notice of the Bar Date. (Bar Date Order at 2 ¶(a)).

### **THE PLAN**

8. On August 31, 2010, the Debtors filed the *Debtors’ Joint Chapter 11 Plan* with the Bankruptcy Court. (Dkt. No. 6829). On March 18, 2011, the Debtors filed the *Debtors’ Second Amended Joint Chapter 11 Plan* with the Bankruptcy Court (the “Plan”). (Dkt. No. 9836). The Plan is a plan of liquidation.

9. On December 8, 2010, the Debtors filed the *Disclosure Statement for Debtors’ Amended Joint Chapter 11 Plan* with the Bankruptcy Court (the “Disclosure Statement”). (Dkt. No. 8023).

10. On December 8, 2010, the Bankruptcy Court entered an *Order Granting Motion (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Notice Packages and Procedures for Distribution Thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notices to Non-Voting Classes Under the Plan*. (Dkt. No. 8043).

11. The Plan, as described in the Disclosure Statement designates six (6) distinct classes of claims or equity interests: Class 1 – secured claims; Class 2 – priority non-tax claims; Class 3 – general unsecured claims; Class 4 – property environmental claims; Class 5 – asbestos personal injury claims; and, Class 6 – equity interests in MLC. (Disclosure Statement at 4-8).

12. The aggregate amount of General Unsecured Claims filed against the Debtors on or before the Bar Date, as well as the General Unsecured Claims listed on the Debtors' schedules was approximately \$270 billion. (Disclosure Statement at 57).

13. The Plan provides for the GUC Trust to be established on the Effective Date (as defined below) under the terms of the Plan and Confirmation Order (as defined below) and the Motors Liquidation Company GUC Trust Agreement dated as of March 30, 2011 (as amended, the "GUC Trust Agreement").

14. Under the terms of the Plan, for each \$1,000 in amount of allowed general unsecured claims against the Debtors that existed as of the date the Plan became effective (together with the disputed general unsecured claims asserted against the Debtors that are subsequently allowed, the "Allowed General Unsecured Claims"), the holders of such claims were entitled to receive (upon delivery of any information required by the GUC Trust) approximately 3.80 shares of New GM Common Stock, and approximately 3.46 warrants of each series of New GM Warrants, exclusive of any securities received, or to be received, in respect of GUC Trust Units (as defined below). (See Plan § 6.2; GUC Trust Agreement at Ex. A-1). The holders of Allowed General Unsecured Claims were also entitled to receive one unit of beneficial interest in the GUC Trust (a "GUC Trust Unit") for each \$1,000 in amount of Allowed General Unsecured Claims. (*Id.*). Under the terms of the Plan, holders of disputed general unsecured claims against the Debtors were entitled to receive subsequent distributions of New GM Securities and GUC Trust Units in respect of such claims only if and to the extent that their disputed general unsecured claims were subsequently allowed. (See Plan § 7.4).

15. On March 29, 2011, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code*

*and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Plan* (the "Confirmation Order"). (Dkt. No. 9941).

16. The Plan became effective on March 31, 2011 (the "Effective Date"). (Dkt No. 10056).

17. The Plan provided that on the Effective Date, the Plan would be deemed to be substantially consummated. (Plan §12.2).

18. The Plan has been substantially consummated. *See In re Motors Liquidation Co.*, 462 B.R. 494, 501 n. 36 (Bankr. S.D.N.Y. 2012) ("[T]he Plan already has been substantially consummated").

19. On December 15, 2011 (the "Dissolution Date"), as required by the Plan, MLC was dissolved. (See Form 10-K Annual Report for Motors Liquidation Company GUC Trust for the Fiscal Year Ended March 31, 2014, filed May 22, 2014 ("GUC Trust 2014 Form 10-K") at 3).

20. Prior to the confirmation of the Plan by the Bankruptcy Court, certain general unsecured claims were traded.

21. As of the Effective Date, there were approximately: (a) \$29.771 billion in Allowed General Unsecured Claims (the "Initial Allowed General Unsecured Claims") (*see* GUC Trust 2014 Form 10-K at 6); (b) \$8.154 billion in disputed general unsecured claims, which did not include potential Term Loan Avoidance Action Claims (defined below) (*id.* at 7); and (c) potentially \$1.5 billion in additional general unsecured claims (the "Term Loan Avoidance Action Claims," and together with the disputed general unsecured claims, the "Disputed General Unsecured Claims") as a result of an avoidance action styled *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, Adv. Pro. No 09-00504 (Bankr. S.D.N.Y. July 31, 2009) (the "JPM Action").



22. The plaintiff in the JPM Action seeks to recover approximately \$1.5 billion in payments made by Old GM to JPMorgan Chase Bank, N.A., on behalf of a consortium of prepetition lenders (the “JPM Action Defendants”).

23. On the Dissolution Date, the right to prosecute the JPM Action was transferred to a trust established under the Plan for the purpose of holding and prosecuting the JPM Action (the “Avoidance Action Trust”). The Avoidance Action Trust is separate from the GUC Trust. The JPM Action is now being prosecuted by the Avoidance Action Trust and is currently on appeal to the Second Circuit. Wilmington Trust Company acts as Trustee for each of the Avoidance Action Trust and the GUC Trust.

24. The Bankruptcy Court rendered a decision in the JPM Action. *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, 486 B.R. 596 (Bankr. S.D.N.Y. 2013).

25. The Second Circuit certified a question of law to the Delaware Supreme Court in the JPM Action. *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, Case No. 13-2187-bk (2d Cir. June 17, 2014).

26. If the plaintiff is successful in the JPM Action, and any subsequent ancillary proceedings, and any JPM Defendant(s) actually disgorge funds to the Avoidance Action Trust in connection therewith, any such JPM Action Defendant will be treated as an allowed general unsecured creditor of MLC with Term Loan Avoidance Action Claims equaling the amount that they actually disgorge to the Avoidance Action Trust (which, in the aggregate, could be up to \$1.5 billion, exclusive of prejudgment interest). The beneficiaries of any amounts ultimately disgorged by the JPM Action Defendants is a matter of dispute, as both the lenders that provided MLC with debtor-in-possession financing (the “DIP Lenders”), and the Committee, on behalf of holders of Allowed General Unsecured Claims, are each claiming an exclusive right to such

proceeds. Although the Bankruptcy Court granted summary judgment in favor of the Committee, finding that the holders of Allowed General Unsecured Claims were the proper beneficiaries of the Avoidance Action Trust (and thus the proceeds of the JPM Action), the United States District Court for the Southern District of New York (the “District Court”) vacated the Bankruptcy Court’s decision and order for want of subject matter jurisdiction. The District Court specifically found that the issue regarding the identity of the proper beneficiaries of the Avoidance Action Trust was not and would not be ripe for adjudication unless and until the JPM Action were decided in favor of the Avoidance Action Trust. In the event that it is determined that the holders of Allowed General Unsecured Claims are entitled to the proceeds (if any) of the JPM Action, then such proceeds (if any) will be contributed to the Avoidance Action Trust, for distribution to the holders of Allowed General Unsecured Claims (following the reimbursement of certain fees and expenses to the DIP Lenders).

27. If the defendants are successful in the JPM Action (including with respect to any appeals), \$1.5 billion of Disputed General Unsecured Claims will be eliminated from Old GM’s bankruptcy estate, and certain of the New GM Securities that have been reserved will be available for distribution. As of the Effective Date, the total aggregate amount of general unsecured claims, both allowed and disputed, asserted against the Debtors, including potential Term Loan Avoidance Action Claims, was approximately \$39.426 billion. (See April 21, 2011 Form 8-K of the Motors Liquidation GUC Trust at 4).

#### **The GUC Trust**

28. The GUC Trust was formed on March 30, 2011 as a statutory trust under the Delaware Statutory Trust Act. (See GUC Trust Agreement at 13, Article II, § 2.1). The GUC Trust is, among other things, responsible for implementing the Plan, including distributing New GM Securities and GUC Trust Units to holders of Allowed General Unsecured Claims in

satisfaction of their claims, resolving Disputed General Unsecured Claims that were outstanding as of the Effective Date, distributing New GM Securities and GUC Trust Units in satisfaction of such Disputed General Unsecured Claims that are subsequently allowed, and resolving remaining disputed administrative expense claims, priority tax claims, priority non-tax claims and secured claims against the Debtors. (*See id.* at 3, Background § G).

29. The “GUC Trust Beneficiaries” are as defined in the GUC Trust Agreement in Background § F.

30. As of the Effective Date, the corpus of the GUC Trust consisted of approximately \$52.7 million in cash contributed by the Debtors to fund the administrative fees and expenses (including certain tax obligations) incurred by the GUC Trust in administering its duties pursuant to the Plan and the GUC Trust Agreement (the “Administrative Fund”). (*See* GUC Trust 2014 Form 10-K at 3). The cash comprising the Administrative Fund was obtained by MLC from the DIP Lenders and is subject to a lien held by the DIP Lenders, with any excess funds remaining in the Administrative Fund required to be returned to the DIP Lenders, according to the GUC Trust 2014 Form 10-K, after (i) the satisfaction in full of all Wind Down Costs and other liabilities of the GUC Trust (subject to the terms of the GUC Trust Agreement), and (ii) the winding up of the GUC Trust’s affairs. (*Id.*). The Administrative Fund cannot be used to make distributions to holders of Allowed General Unsecured Claims. (*Id.*).

31. Pursuant to the Plan, on the Dissolution Date, MLC transferred to the GUC Trust (i) record ownership of all of its then remaining New GM Securities, which consisted of 30,967,561 shares of New GM Common Stock, 28,152,186 New GM Series A Warrants and 28,152,186 New GM Series B Warrants, (ii) approximately \$2.0 million designated for certain public reporting costs, and (iii) approximately \$1.4 million designated for reimbursing the indenture trustees and the fiscal and paying agents under the Debtors’ prepetition debt issuances

for costs associated with, among other things, administering distributions to registered holders of the Debtors' prepetition debt issuances. (*See* GUC Trust 2014 Form 10-K at 4).

32. Under the terms of the GUC Trust Agreement, the GUC Trust Administrator is authorized to determine whether the GUC Trust may be entitled to receive a distribution of additional New GM Common Stock as a result of the aggregate amount of Allowed General Unsecured Claims exceeding \$35 billion, and, if the GUC Trust is so entitled, to request the issuance of such additional shares by New GM to the GUC Trust. (*See* GUC Trust Agreement, § 2.3(d)).

33. Each GUC Trust Unit represents "the contingent right to receive, on a *pro rata* basis, the excess assets of the GUC Trust, including additional New GM Securities (if and to the extent such New GM Securities are not required for satisfaction of the Resolved Allowed Claims), Dividend Cash associated with such additional New GM Securities and Other Administrative Cash, if any, available for distribution in respect of the GUC Trust Units, either through a periodic distribution as provided for under the GUC Trust Agreement, or upon the dissolution of the GUC Trust, in each case subject to the terms and conditions of the GUC Trust Agreement and the Plan." (GUC Trust 2014 Form 10-K at 5-6).

### **GUC TRUST DISTRIBUTIONS**

34. On April 21, 2011, and as supplemented by a distribution completed on or around May 26, 2011, an initial distribution (the "Initial Distribution") of more than 75% of the New GM Securities then held by the GUC Trust was made to the holders of Initial Allowed General Unsecured Claims. (*See* April 21, 2011 Form 8-K of the Motors Liquidation GUC Trust at 2).<sup>3</sup>

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<sup>3</sup> Prior to December 15, 2011, the date on which all remaining New GM Securities held by MLC were transferred by MLC to the GUC Trust, the GUC Trust either requisitioned New GM Securities from MLC and itself made the

35. According to the GUC Trust 2014 Form 10-K, the New GM Securities that were not distributed in the Initial Distribution were the New GM Securities that would be necessary to pay the holders of Disputed General Unsecured Claims that become Allowed General Unsecured Claims (the “Resolved Allowed Claims”), New GM Securities associated with holders of Allowed General Unsecured Claims that had not provided sufficient information to the GUC Trust to permit distribution (“Information Deficient Claims”), and those New GM Securities that were otherwise set aside from distribution (“Set Aside Securities”) for the purposes of funding then-current or projected liquidation and administrative costs and other liabilities of the GUC Trust (including income taxes). The distributable assets currently held by the GUC Trust are set forth in the GUC Trust 2014 Form 10-K.

36. The GUC Trust Agreement sets forth provisions relating to when distributions should be made.

37. According to the GUC Trust Agreement, “[a]s promptly as practicable following the beginning of each calendar quarter, beginning with the second calendar quarter, the GUC Trust Administrator, with the approval of the GUC Trust Monitor, shall deliver to each holder, if any, of a Disputed General Unsecured Claim or other Claim that has become a Resolved Allowed General Unsecured Claim during the prior calendar quarter (or, in the case of the second calendar quarter, since the Initial Distribution Record Date) a distribution consisting of . . . the pro rata amount of GUC Trust Distributable Assets that the holder of such Resolved Allowed General Unsecured Claim would have received had such Resolved Allowed General Unsecured Claim been an Initial Allowed General Unsecured Claim,” and “a number of Units”

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[Footnote continued from previous page]

distribution of the New GM Securities, or requested that MLC make the distributions to the accounts of allowed claim holders designated by the GUC Trust. After December 15, 2011, all distributions of New GM Securities were made directly by the GUC Trust.

as provided in the GUC Trust Agreement.” (See GUC Trust Agreement, Article V, §5.3(a); *see also* GUC Trust 2014 Form 10-K at 6)).

38. The GUC Trust made quarterly distributions on July 28, 2011, October 28, 2011, January 13, 2012, April 27, 2012, August 3, 2012, November 5, 2012, February 8, 2013, May 10, 2013, August 9, 2013, October 31, 2013 and May 9, 2014, each in respect of Disputed General Unsecured Claims that were resolved in the immediately preceding fiscal quarter. (GUC Trust 2014 Form 10-K at 6).

39. On October 21, 2013, the Bankruptcy Court entered an order (the “Nova Scotia Order”) approving a settlement agreement (the “Nova Scotia Settlement”) relating to claims arising from the 8.375% guaranteed notes due December 7, 2015 and the 8.875% guaranteed notes due July 10, 2023, in each case issued in 2003 by General Motors Nova Scotia Finance Company (the “Nova Scotia Claims”). (GUC Trust 2014 Form 10-K at 12). Pursuant to the Settlement Agreement, the Nova Scotia Claims were reduced and allowed in an aggregate amount of \$1.55 billion. As a result, on or about December 2, 2013, in accordance with the Nova Scotia Settlement and the Nova Scotia Order, the GUC Trust made a distribution solely to holders of the allowed Nova Scotia Claims, consisting of, in the aggregate, 6,174,015 shares of New GM Common Stock, 5,612,741 New GM Series A Warrants, 5,612,741 New GM Series B Warrants, and 1,550,000 GUC Trust Units. (*Id.*).

40. In addition, on or about December 23, 2013, in accordance with the Nova Scotia Settlement and the Nova Scotia Order, the GUC Trust made a special distribution of Excess GUC Trust Distributable Assets to all holders of GUC Trust Units, consisting of 6,735,070 shares of New GM Common Stock, 6,122,789 New GM Series A Warrants, and 6,122,789 New GM Series B Warrants. (*Id.*).

41. The following table details the New GM Securities that have been distributed to holders of Allowed General Unsecured Claims by the GUC Trust:

	<b>Shares of New GM Common Stock</b>	<b>A Warrants</b>	<b>B Warrants</b>
<b>April 21, 2011 Distribution:</b>	113,194,172	102,903,821	102,903,821
<b>July 28, 2011 Distribution:</b>	3,342,831	3,038,936	3,038,936
<b>October 28, 2011 Distribution:</b>	2,468,218	2,243,834	2,243,834
<b>January 13, 2012 Distribution:</b>	188,180	171,074	171,074
<b>April 27, 2012 Distribution:</b>	450,555	409,612	409,612
<b>August 3, 2012 Distribution:</b>	484,553	440,510	440,510
<b>November 2, 2012 Distribution:</b>	116,508	105,910	105,910
<b>February 8, 2013 Distribution:</b>	42,151	38,325	38,325
<b>May 10, 2013 Distribution:</b>	115,029	104,570	104,570
<b>August 9, 2013 Distribution:</b>	221,014	200,924	200,924
<b>October 31, 2013 Distribution:</b>	42,122	38,293	38,293
<b>December 2, 2013 Nova Scotia Settlement Distribution:</b>	6,174,015	5,612,741	5,612,741
<b>May 9, 2014 Distribution:</b>	43,310	39,371	39,371

Available at <https://www.mlcguctrust.com/FAQDocuments.aspx>.

42. As of March 31, 2014, the GUC Trust has distributed (or was obligated to distribute), in the aggregate, 134,106,321 shares of New GM Common Stock, 121,914,975 of each series of New GM Warrants and 31,853,702 GUC Trust Units in respect of Allowed General Unsecured Claims aggregating approximately \$31.854 billion. (GUC Trust 2014 Form 10-K at 6).

**CLAIMS AGAINST THE GUC TRUST AND GUC TRUST ASSETS**

43. According to the GUC Trust, Allowed General Unsecured Claims, as of March 31, 2014, totaled approximately \$31.854 billion.

44. As of March 31, 2014, the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of Disputed General Unsecured Claims (inclusive of the potential Term Loan Avoidance Action Claims) totaled approximately \$1.579 billion. (GUC Trust 2014 Form 10-K at 51). In the event such claims become Allowed General Unsecured Claims, the GUC Trust will distribute to the holders of such claims their pro rata distribution of New GM Securities.

45. According to the GUC Trust, the GUC Trust's aggregate holdings of New GM Securities (*i.e.*, New GM Common Stock and New GM Warrants), at fair value, as of March 31, 2014, was \$1.1 billion. The \$1.1 billion includes certain assets that have been reserved or set aside to fund the GUC Trust's potential costs of liquidation and potential tax liabilities. Specifically, New GM Securities aggregating \$51.6 million (excluding related dividend cash) have been reserved, or set aside, for projected GUC Trust fees, costs and expenses to be incurred beyond 2014 (including \$3.5 million for projected dividend taxes), and \$536.3 million (excluding related dividend cash) of New GM Securities have been reserved, or set aside, for potential taxes on distribution. As a result, as of March 31, 2014, the number of New GM Securities included in the GUC Trust's aggregate holdings of New GM Securities, includes an aggregate of 8,072,042 shares of New GM Common Stock, 7,338,194 New GM Series A Warrants, and 7,338,194 New GM Series B Warrants, which have been so reserved or set aside.

46. According to the GUC Trust, with respect to distributable assets, as of March 31, 2014, the GUC Trust held remaining distributable assets (which, for the avoidance of doubt, excluded Set Aside Securities and New GM Securities associated with the Information Deficient



Claims) of 7,138,543 shares of New GM Common Stock, 6,489,475 of each series of New GM Warrants, and \$2,141,564 of dividend cash, which have all been set aside in respect of current Disputed General Unsecured Claims (including the potential Term Loan Avoidance Action Claims), and will be distributed to the holders of such claims in the event that they become Resolved Allowed Claims. (*Id.* at 31).

#### **TRADING OF GUC TRUST UNITS**

47. Pursuant to a No Action Letter received from the United States Securities and Exchange Commission (“SEC”) on May 23, 2012 (the “No Action Letter”), the GUC Trust Units are transferable in accordance with the procedures of the Depository Trust Company (“DTC”) and its direct and indirect participants.

48. While the No Action Letter allows for the transferability of GUC Trust Units in accordance with DTC procedures, the GUC Trust may not encourage the transfer of the GUC Trust Units it has distributed pursuant to the GUC Trust Agreement, and may not take any actions to facilitate or promote a trading market in the GUC Trust Units.

49. Beginning April 28, 2011, and quarterly thereafter, the GUC Trust has made public securities filings that reflected the then-current amount of outstanding Disputed General Unsecured Claims. With each public filing, the GUC Trust adjusted the then-current amount of outstanding Allowed General Unsecured Claims and outstanding Disputed General Unsecured Claims to reflect the resolution of the Disputed General Unsecured Claims.

50. The GUC Trust has also filed quarterly reports (the “GUC Trust Reports”) with the Bankruptcy Court which reflected the then-current amount of Allowed General Unsecured Claims and Disputed General Unsecured Claims.

51. As of June 14, 2012, the GUC Trust Units became freely tradable OTC, and are quoted on Bloomberg Finance, L.P.

52. Each of the GUC Trust Reports published by the GUC Trust set forth the then current aggregate amount of Allowed General Unsecured Claims and the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of all Disputed General Unsecured Claims, adjusted to reflect the disposition of Disputed General Unsecured Claims to date. The Maximum Amount of Allowed General Unsecured Claims, as reflected in the quarterly GUC Trust Reports, has continually gone down over time.

53. The March 31, 2014 GUC Trust Report indicates that the total aggregate amount of claims (allowed and disputed) is \$33,433,130. (March 31, 2014 GUC Trust Report, Ex. A).

54. Counsel for the Identified Parties may refer to reports by Bloomberg Finance, L.P. for information relating to trading volume of the GUC Trust Units and the daily prices of GUC Trust Units.

#### **THE PLAN'S STATEMENTS REGARDING GUC TRUST BENEFICIARIES**

55. Pursuant to the Plan, the GUC Trust Agreement provides in relevant part: "No provision of the Plan, the Confirmation Order or this Trust Agreement, and no mere enumeration herein of the rights or privileges of any GUC Trust Beneficiary, shall give rise to any liability of such GUC Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, by creditors or employees of any Debtor, or by any other Person. GUC Trust Beneficiaries are deemed to receive the GUC Trust Distributable Assets in accordance with the provisions of the Plan, the Confirmation Order and this Trust Agreement in exchange for their Allowed General Unsecured Claims or on account of their Units, as applicable, without further obligation or liability of any kind, subject to the provisions of this Trust Agreement." (GUC Trust Agreement, § 3.2).

### **NEW GM'S RECALLS**

56. On February 7, 2014, New GM sent a letter (the "February 7 Letter") to the National Highway Traffic Safety Administration ("NHTSA") indicating that New GM, through its Executive Field Action Decision Committee, decided "to conduct a safety related recall for certain 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles." An attachment to the February 7 Letter indicates that 619,122 vehicles were potentially involved in the recall.

57. On February 25, 2014, New GM sent another letter to NHTSA (the "February 25 Letter"). The February 25 Letter indicates that on February 24, 2014, New GM, through its Executive Field Action Decision Committee, decided "to conduct a safety recall" for 2003-2007 model years Saturn Ion, 2006-2007 model years Chevrolet HHR, 2006-2007 model years Pontiac Solstice, and 2007 model year Saturn Sky vehicles (collectively with the recall described in the February 7 Letter, the "Ignition Switch Recall"). An attachment to the February 25 Letter reflects that 748,024 vehicles were potentially involved in this recall.

58. On February 25, 2014, New GM publicly announced that it was expanding the Ignition Switch Recall to include the 2003-2007 model years Saturn Ion, 2006-2007 model years Chevrolet HHR, 2006-2007 model years Pontiac Solstice, and 2007 model year Saturn Sky vehicles.

59. On March 28, 2014, New GM sent a letter to NHTSA indicating that on March 20, 2014, New GM, acting through its Executive Field Action Decision Committee, decided "to conduct a safety related recall" of "Ignition & Start Switches manufactured in Mexico by: Delphi Packard Electrical/Electronic Architecture" (the "March 28 Letter"). The March 28 Letter explains that

[New GM] has decided that a defect which relates to motor vehicle safety exists in GM Parts and ACDelco Ignition & Start Switch service part number 10392423,

and the following Ignition & Start Switch Housing Kits that contain or may contain part number 10392423: GM Parts and ACDelco service part numbers 10392737, 15857948, 15854953, 15896640, and 25846762. [New GM] records indicate these service parts may have been installed during repairs in some 2008-2010 MY Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles.

60. The March 28 Letter also states that “[t]he ignition switch torque performance on vehicles repaired with GM Parts and ACDelco Ignition & Start Switch part number 10392423 or assemblies that contain part number 10392423 may not meet General Motors’ specification.”

61. The March 28 Letter further states that on March 27, 2014, New GM acting through its Executive Field Action Decision Committee, decided that “to provide a comprehensive remedy, GM will replace the ignition switch on all 2008-2010 MY Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles in order to replace all potentially suspect service parts.”

62. Through an attachment to the March 28 Letter, New GM reported that 823,788 vehicles were potentially involved in this recall.

63. On March 28, 2014, New GM issued a press release stating that it would “replace the ignition switch in all model years of its Chevrolet Cobalt, HHR, Pontiac G5, Solstice, and Saturn Ion and Sky” in the U.S. since faulty ignition switches may have been used to repair the vehicles (the “March 28 Announcement”). (See <http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/mar/0328-ignition-service.html>).

64. In its March 28 Announcement, New GM explained that “[a]bout 95,000 faulty switches were sold to dealers and aftermarket wholesalers,” of which “about 90,000 were used to repair older vehicles that were repaired before they were recalled in February,” and that “[b]ecause it is not feasible to track down all the parts, the company is taking the extraordinary

step of recalling 824,000 more vehicles in the U.S. to ensure that every car has a current ignition switch.”

65. On April 10, 2014, New GM filed a Form 8-K with the SEC. According to the press release attached thereto as Exhibit 99.1, New GM added “ignition lock cylinders to its safety recall of 2.2 million older model cars in the United States.” The press release states that the cars covered by this recall were 2003-2007 model years Saturn Ion, 2005-2010 model years Chevrolet Cobalt, 2006-2010 model years Pontiac Solstice, 2007-2010 model years Pontiac G5, 2007-2010 model years Saturn Sky, and 2006-2011 model years Chevrolet HHR, and that “the cylinders can allow removal of the ignition key while the engine is running, leading to a possible rollaway, crash and occupant or pedestrian injuries.”

66. On March 17, 2014, New GM filed a Form 8-K with the SEC regarding three safety recalls involving approximately 1.5 million vehicles (collectively, the “March 17 Recall”). The March 17, 2014 press release attached thereto as Exhibit 99.1 states that the three recalls cover:

- (a) 303,000 2009-2014 model years Chevrolet Express and GMC Savana vehicles with gross vehicle weight under 10,000 pounds, which New GM stated “do not comply with a head impact requirement for unrestrained occupants, requiring a rework of the passenger instrument panel material;”
- (b) 63,900 2013-2014 model years Cadillac XTS full-size sedans, in which pressure created by a brake booster pump can “lead to the dislodging of a plug in the brake booster pump relay, allowing corrosive elements to enter the connector and form a low-resistance short that could lead to overheating, melting of plastic components and a possible engine compartment fire;” and
- (c) 1.18 million 2008-2013 model years Buick Enclave and GMC Acadia, 2009-2013 model years Chevrolet Traverse, and 2008-2010 model years Saturn Outlook vehicles to correct for “the non-deployment of the side impact restraints, which include driver and passenger seat-mounted side air bags, front center air bag (if equipped), and the seat belt pretensioners.”

*GM Redoubles Safety Efforts, Announces New Recalls*, Mar. 17, 2014.<sup>4</sup>

67. On April 1, 2014, New GM filed a Form 8-K with the SEC regarding a safety recall of approximately 1.3 million vehicles “for the correction of electric power steering assist conditions” (the “Power Steering Assist Recall”). The March 31, 2014 press release attached thereto as Exhibit 99.1 describes a potential “sudden loss of electric power steering assist” occurring in the recalled vehicles, which include:

- a. Chevrolet Malibu: All model year 2004 and 2005, and some model year 2006 and model year 2008 and 2009 vehicles;
- b. Chevrolet Malibu Maxx: All model year 2004 and 2005, and some 2006 model year;
- c. Chevrolet HHR (Non-Turbo): Some model year 2009 and 2010 vehicles;
- d. Chevrolet Cobalt: Some model year 2010 vehicles;
- e. Saturn Aura: Some model year 2008 and 2009 vehicles;
- f. Saturn ION: All model year 2004 to 2007 vehicles;
- g. Pontiac G6: All model year 2005, and some model year 2006 and model year 2008 and 2009 vehicles; and
- h. Service parts installed into certain vehicles before May 31, 2010 under a previous safety recall.

*GM Recalls Older Model Vehicles to Fix Power Steering*, Mar. 31, 2014.

68. In its March 31, 2014 press release, New GM states that the 2004-2007 model years Saturn Ion, the 2009-2010 model years Chevrolet HHR, and the 2010 model year Chevrolet Cobalt “are included in previously announced recalls for ignition switches that may

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<sup>4</sup> Available at <http://media.gm.com/media/us/en/gm> (last visited June 2, 2014).

not meet GM specification for torque performance” and that “[r]epairs for the ignition switch and power steering assist may require separate dealership visits depending on parts availability.” (*Id.*).

69. On May 15, 2014, New GM filed a Form 8-K with the SEC concerning five additional safety recalls involving approximately 2.7 million vehicles (collectively, the “May 15 Recall”). According to New GM’s May 15, 2014 press release attached thereto as Exhibit 99.1, the “largest recall” among the May 15 Recall involves 2,440,524 2004-2012 model years Chevrolet Malibu, 2004-2007 model years Chevrolet Malibu Maxx, 2005-2010 model years Pontiac G6 and 2007-2010 model years Saturn Aura vehicles in the U.S. to “modify the brake lamp wiring harness.” The “[a]ffected vehicles could have a corrosion develop in the wiring harness for the body control module” and the “condition could result in brake lamps failing to illuminate when the brakes are applied,” “brake lamps illuminating when the brakes are not engaged,” and the disabling of “cruise control, traction control, electronic stability control, and panic braking assist operation.” *GM Announces Five Safety Recalls*, May 15, 2014.<sup>5</sup>

70. The May 15 Recall also includes the recall of more than 111,889 2005-2007 model years Chevrolet Corvettes “for [a] potential loss of low-beam headlamp operation” that “could reduce the driver’s visibility, increasing the risk of a crash.” (*Id.*).

71. The remaining recalls announced through the May 15 Recall cover:

- (a) 140,067 2014 model year Chevrolet Malibu vehicles due to the “disabling of hydraulic brake boost that can require greater pedal efforts;”
- (b) 19,225 2013-2014 model years Cadillac CTS vehicles “for a condition in which the windshield wiper system may become inoperable after a vehicle jump start with wipers active and restricted, such as by ice and snow,” causing a “[p]otential lack of visibility [that] could increase the risk of a crash;” and

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<sup>5</sup> Available at <http://media.gm.com/media/us/en/gm> (last visited June 2, 2014).

- (c) 477 2014 model year Chevrolet Silverado and GMC Sierra vehicles and 2015 model year Chevrolet Tahoe vehicles, in which an “attachment to the steering gear rack . . . may not be tightened to specification,” potentially leading a “crash [to] occur without warning.”

(*Id.*).

72. On May 20, 2014, New GM filed a Form 8-K with the SEC concerning four new safety recalls involving approximately 2.42 million vehicles (the “May 20 Recall”). The May 20, 2014 press release attached thereto as Exhibit 99.1 indicates that the May 20 Recall covers:

- (a) 1,339,355 2009-2014 model years Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles and 2009-2010 model years Saturn Outlook vehicles “because front safety lap belt cables can fatigue and separate over time” and during a crash, “a separated cable could increase the risk of injury to front seat passengers;”
- (b) 1,075,102 “previous generation” 4-speed automatic transmission and 2004-2008 model years Chevrolet Malibu and 2005-2008 model years Pontiac G6 vehicles “because of a shift cable that could wear out over time,” potentially preventing the driver from “select[ing] a different gear, remov[ing] the key from the ignition, or plac[ing] the transmission in park;”
- (c) 1,402 2015 model year Cadillac Escalades and Escalade ESV vehicles “because an insufficiently heated plastic weld that attaches the passenger side air bag to the instrument panel assembly could result in a partial deployment of the air bag in the event of a crash,” leading New GM to stop sale of all 2015 Escalade and Escalade ESV vehicles and to contact customers who had taken delivery of these vehicles to instruct them “to not let occupants sit in the front passenger seat until the vehicle has been serviced;” and
- (d) 58 2015 model year Chevrolet Silverado HD and GMC Sierra HD vehicles “because retention clips attaching the generator fuse block to the vehicle body can become loose and lead to a potential fire.”

*GM Recalls 2.42 Million Vehicles in Four U.S. Recalls*, May 16, 2014.<sup>6</sup>

73. On June 16, 2014, New GM filed a Form 8-K with the SEC “regarding safety recalls of certain models primarily to rework or replace the ignition keys on approximately 3.16

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<sup>6</sup> Available at <http://media.gm.com/media/us/en/gm> (last visited June 2, 2014).



million U.S. cars from the 2000 to 2014 model years” (collectively, the “June 16 Recall”).

According to New GM’s June 16, 2014 press release attached thereto as Exhibit 99.1, the June 16 Recall involves 2005-2009 model years Buick Lacrosse, 2006-2014 model years Chevrolet Impala, 2000-2005 model years Cadillac Deville, 2004-2011 model years Cadillac DTS, 2006-2011 model years Buick Lucerne, 2004-2005 model years Buick Regal LS & GS, and 2006-2008 model years Chevy Monte Carlo vehicles.

74. In an interview dated June 26, 2014 with Matt Lauer of the Today Show, Mary Barra, Chief Executive Officer of New GM, was asked whether New GM would be issuing additional recalls. Ms. Barra responded: “It’s—it’s possible.”

75. On June 30, 2014, New GM filed a Form 8-K with the SEC concerning additional safety recalls covering approximately 7.6 million vehicles in the U.S. (collectively, the “June 30 Recall”). According to New GM’s June 30, 2014 press release attached thereto as Exhibit 99.1, the June 30 Recall involves about 7.6 million vehicles from the 1997 to 2014 model years and relates to “inadvertent ignition key rotation.” (*Id.*).

76. On July 23, 2014, New GM announced six additional safety recalls covering a total of 717,949 vehicles in the U.S. (collectively, the “July 23 Recall”). According to New GM’s July 23, 2014 press release, the recalls cover vehicles from model years 2010 through 2015 and pertain to safety-related defects in those vehicles’ front turn signals, front-turn signal bulbs, roof-rail air bags, electric power steering, power height adjustable seats, lower control arm bolts, and incomplete welds on seat hook bracket assemblies.

77. The Ignition Switch Recall, the March 17 Recall, the Power Steering Assist Recall, the May 15 Recall, the May 20 Recall, the June 16 Recall, the June 30 Recall, and the July 23 Recall are among the recalls that New GM has issued since January 1, 2014, but they are not the only recalls New GM has announced since that time. According to New GM, 25,484,746

vehicles in the U.S. from model years 1997-2015 have been recalled since January 13, 2014 to date. *See* GM Q1 and Q2 2014 North American Recalls Including Exports.<sup>7</sup>

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<sup>7</sup> Available at [http://media.gm.com/content/dam/Media/images/US/Release\\_Images/2014/05-2014/recalls/Recalls-Running-Total.jpg](http://media.gm.com/content/dam/Media/images/US/Release_Images/2014/05-2014/recalls/Recalls-Running-Total.jpg) (last visited July 28, 2014).

# Attachment 1

**ATTACHMENT 1**

**THE GUC TRUST'S AND UNITHOLDERS'  
PROPOSED STIPULATIONS OF FACT NOT AGREED TO  
BY OTHER COUNSEL FOR THE IDENTIFIED PARTIES**

1. As of August 8, 2014, New GM has not confirmed that there will not be additional recalls of vehicles relating to the Ignition Switch.
2. As of March 31, 2014, the sum of (i) Allowed General Unsecured Claims (approximately \$31.854 billion, as reported in paragraph 45 of the Equitable Mootness Stipulations) and (ii) the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of Disputed General Unsecured Claims that could become Resolved Allowed Claims (approximately \$1.579 billion, as reported in paragraph 46 of the Equitable Mootness Stipulations) totaled approximately \$33.433 billion.
3. Based on closing prices of New GM Securities, as reported by Bloomberg Finance, L.P., as of July 16, 2014, the total value of GUC Trust assets set aside for distribution in respect of current Disputed General Unsecured Claims (including the potential Term Loan Avoidance Action Claims) is approximately \$576,905,901.
4. While certain late claims have been allowed in the Old GM bankruptcy case, less than 1% (0.093%) of total allowed claims as of the Bar Date were allowed subsequent to the Bar Date but before the Effective Date, and less than 1% (0.147%) of total allowed claims as of the Bar Date were allowed subsequent to the Bar Date and after the Effective Date.
5. As reported by Bloomberg Finance L.P., as of July 14, 2014, approximately 96 million GUC Trust Units have been bought and sold since June 14, 2012.
6. As reported by Bloomberg Finance L.P., as of July 14, 2014, the aggregate trading value of the GUC Trust Units that have traded since June 14, 2012 (based on daily closing prices) totals approximately \$1.993 billion.

7. On August 8, 2014, New GM announced five new safety recalls of 269,001 model years 2002-2004, 2009-2010, and 2013-2015 vehicles (collectively, the “August 8 Recall”). *GM Announces Recalls*, Aug. 8, 2014.<sup>8</sup> Among the vehicles recalled through the August 8 Recall are 202,115 model years 2002-2004 Saturn VUEs “because the ignition key can possibly be removed when the vehicle is not in the off position.” According to New GM, New GM has recalled 25,754,356 vehicles in the U.S. from model years 1997-2015 since January 13, 2014 to date. *See* GM 2014 Year-to-Date North American Recalls Including Exports.<sup>9</sup>

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<sup>8</sup> Available at <http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/Aug/0808-recalls.html> (last visited Aug. 8, 2014).

<sup>9</sup> Available at [http://media.gm.com/content/dam/Media/images/US/Release\\_Images/2014/05-2014/recalls/Recalls-Running-Total-pdf.pdf](http://media.gm.com/content/dam/Media/images/US/Release_Images/2014/05-2014/recalls/Recalls-Running-Total-pdf.pdf) (last visited Aug. 8, 2014).